

FINAL BILL REPORT

SSB 5115

C 36 L 11
Synopsis as Enacted

Brief Description: Concerning private transfer fee obligations.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Harper, Pflug, Kline, Roach, Carrell and Kilmer).

Senate Committee on Judiciary
House Committee on Judiciary

Background: Covenants are formal agreements or promises between individuals. Covenants may be used to ensure the execution or prevention of an action. A covenant for a title is a covenant that binds the person conveying the property to ensure the completeness, security, and continuance of the title transferred.

A private transfer fee is a form of covenant that is attached to real property by the owner and requires payment of a fee upon each resale of the property. The fee typically is paid to an identified third party, such as the property developer or its trustee, is often calculated as a percentage of the property's sales price, and can survive for a specified period of years.

It is reported that up to 19 other states have a full or partial ban on private transfer fees.

Summary: A private transfer fee is defined. Certain fees and taxes are expressly excluded from the definition of a private transfer fee and include: real estate broker commissions, rent, taxes and fees imposed by a governmental entity, and home owner association fees.

Future Transfer Fee Obligations. A private transfer fee recorded or entered into in this state on or after the effective date of this act does not run with the title to real property and is not binding or enforceable at law or in equity. A private transfer fee that is recorded on or after the effective date of this act is void and unenforceable.

Any person who records, or enters into, an agreement imposing a private transfer fee in the person's favor after the effective date of this section is liable for any damages resulting from the imposition of the fee.

Existing Transfer Fee Obligations. A private transfer fee obligation recorded before the effective date of this section is not presumed valid and enforceable. Any private transfer fee

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must be interpreted and enforced according to specified principles of applicable real estate law, contract law, and common law principles.

For private transfer fees imposed prior to the effective date of this bill, the person or entity who claims the right to collect a private transfer fee must record a separate document with the county before December 31, 2011. The document must include specified information about the private transfer fee. If the notice is not filed as required, then the private transfer fee obligation is null and void and the real property must be conveyed free and clear from the fee.

Votes on Final Passage:

Senate	48	0
House	93	0

Effective: April 13, 2011.